

# RHODE ISLAND Lawyers Weekly

## Lacking evidence, fiduciary claim vs. trustee falls short

By: Barry Bridges    April 2, 2021

The Rhode Island Supreme Court has affirmed a trial judge's grant of summary judgment in favor of a plaintiff who was accused by his co-trustee of breaching his fiduciary duties while managing trust assets, concluding that there was no competent evidence in the record to support such a claim.

The dispute originated between two siblings, Michael and Joseph Cassiere, who upon the death of their mother, Carmen Neumann, became co-trustees of a revocable trust she established. Although the trust provided for an immediate distribution of assets upon Neumann's death, that provision was not honored when the brothers fell into disagreement on the disposition of a condominium in the trust.

Michael eventually filed suit against Joseph seeking a sale of the property and distribution of the trust assets. Joseph counterclaimed, alleging his brother breached his fiduciary duties as a trustee. A Superior Court judge granted summary judgment in Michael's favor on both fronts.



In Joseph's appeal, Justice Maureen McKenna Goldberg wrote for the court in affirming across the board, concluding that the lower judge made no error in ordering an equal disbursement between the brothers. Such action was consistent with the language of the trust indicating that Neumann wanted an immediate distribution of trust assets upon her death, Goldberg said.

Goldberg also agreed with the lower judge that Joseph's fiduciary duty counterclaim failed for lack of evidence.

"After the trial justice graciously provided defendant a continuance ... to produce competent evidence of a disputed issue of material fact — by affidavit, deposition testimony, or otherwise — defendant's efforts, if any, wholly missed the mark," she wrote. "Rather than taking advantage of this opportunity, he presented an array of nebulous claims ... [and] did not point to any facts, or provide any documents, to support a claim for breach of fiduciary duty, and he failed to present any evidence of damages whatsoever."



Representing plaintiff Michael Cassiere were Gene M. Carlino, Rebecca M. Murphy and Patrick J. McBurney, all of Pannone, Lopes, Devereaux & O'Gara in Johnston.

"The decision reinforces the cardinal rule of interpreting a testamentary instrument, and that is to effectuate the settlor's intent," Carlino said on the distribution aspect of the decision. "In this instance, we felt the instrument was clear and unambiguous. We are happy the state Supreme Court sustained the Superior Court's determination that the instrument clearly required termination of the trust and distribution of our client's share of the trust assets."

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## Delayed condominium sale

In 2006, Neumann executed a revocable trust, naming herself as trustee and her sons, Michael and Joseph, as successor co-trustees. Neumann thereafter transferred her Florida condominium to the trust.

The trust specified that after the settlor's death, all debts, funeral expenses, taxes and administrative costs were to be paid, but that "[t]his direction shall not postpone the distribution of the Trust Estate remaining at Settlor's death" equally between the brothers.

Neumann died in 2010, but the assets remained undistributed for years. Michael attributed the delay to Joseph's unwillingness to agree to a sale of the Florida property. Michael filed suit in Superior Court, alleging that his brother did not maintain the property, pay taxes or make mortgage payments. Michael further said that he and his wife used their personal funds to pay outstanding taxes and condo association fees, bring the mortgage current, and reinstate insurance and utilities.

The complaint sought the appointment of a commissioner to sell the property, a termination of the trust and distribution of assets, and the removal of Joseph as co-trustee considering his refusal to sell the property.

Joseph counterclaimed, positing that Michael breached his fiduciary duty as a co-trustee by not keeping him informed on Michael's actions in managing the property. He asked the court to remove Michael as co-trustee and to order him to provide trust records, including any income produced from tenants. Joseph claimed his brother had sold assets of the estate while never accounting for the funds.

On Feb. 1, 2018, the trial judge permitted Michael to enter into a purchase and sale agreement without Joseph's signature, with proceeds to be held in escrow until the litigation was resolved.

After the property was sold, Michael moved for summary judgment on all claims and requested a final distribution of the escrowed funds.

Michael passed away later in 2018, and his estate was substituted as the plaintiff.

At the summary judgment hearing, Michael's estate argued that Joseph had failed to set forth any facts relating to the purported breach of fiduciary duty and presented no evidence as to damages.

The trial judge asked Joseph for any material facts that would preclude summary judgment on his counterclaim. Joseph responded that "to the best of his knowledge" Michael had breached his fiduciary duties.

Even after the court granted a one-month continuance so that the defendant could further examine requested documents such as the escrow statement and tax returns, Joseph could say only that he thought money from the trust had been diverted.

In a March 2019 bench decision, the trial judge granted the plaintiff's motion for summary judgment on the defendant's fiduciary duty counterclaim. The judge noted that despite the continuance, the defendant had failed to obtain any affidavits or deposition testimony to support his contention.

In the defendant's appeal, Goldberg first upheld the lower judge's grant of summary judgment favoring the plaintiff in the defendant's counterclaim, concluding that his fiduciary duty arguments failed for lack of proof.

"Suspicions do not carry the day," Goldberg wrote. "In the face of plaintiff's motion for summary judgment, defendant had an affirmative duty to produce competent admissible evidence that demonstrated a genuine issue of material fact regarding his counterclaim. He failed to do so."

To the contrary, Goldberg continued, Joseph offered only opinions and "bare statements amounting to speculation and conjecture." She stressed that the defendant's statement that "to the best of his knowledge" the plaintiff had breached his fiduciary duties to the trust and its beneficiaries was not enough to win the day.

"At the hearing before the Superior Court, defendant ... alleged that plaintiff had breached his fiduciary duties but admitted he had no evidence to support that claim," Goldberg wrote. "The defendant's arguments consisted of allegations of belief, not facts, and are not sufficient to withstand summary judgment."

The justice also cast a doubtful eye on Joseph's suggestion that he was unable to put his hands on relevant documents that could buttress his claim.

"The record amply demonstrates that defendant chose not to avail himself of numerous opportunities to obtain the documents," she countered. "There is not a scintilla of evidence in the record before us to support the elements of a claim of breach of fiduciary duty."

In affirming the lower court, Goldberg also concluded the trial judge properly ordered a final distribution considering that the settlor's plain intent was for an immediate disbursement upon her death, a directive that had already been delayed for years.

**CASE:** Estate of Cassiere v. Cassiere,  
Lawyers Weekly No. 60-013-21

**COURT:** Rhode Island Supreme Court

**ISSUE:** Did a counterclaimant present evidence demonstrating a genuine issue of material facts so as to preclude an adverse summary judgment ruling in his claim against a co-trustee for breach of fiduciary duties?

**DECISION:** No



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— Justice Maureen McKenna Goldberg

She added: "Pursuant to the February 1, 2018 order, the trust corpus was to be held in escrow and not distributed 'until such time as other claims pending in the case are adjudicated or settled.' Once the trial justice entered judgment on plaintiff's motion for summary judgment on defendant's counterclaim, there remained no outstanding claims alleged by either party. Accordingly, distribution of the trust was proper."

Issue: APRIL 5 2021 ISSUE